

## § 209.7

## 40 CFR Ch. I (7–1–00 Edition)

to any material factual allegation contained in the complaint shall constitute an admission of such allegation.

(e) *Amendment of the answer.* The respondent may amend the answer upon motion granted by the administrative law judge.

### § 209.7 Effective date of order in complaint.

(a) The order in the complaint is effective and binding on respondent 20 days after service of the complaint, unless respondent requests a hearing pursuant to § 209.6. If the respondent does not request a hearing, the order is then a final order of the Agency.

(b) Respondent may file a motion with the complainant to vacate the final order, reopen the proceedings and request a hearing after the order is effective. This motion must be filed within twenty (20) days after the effective date of the order. The motion shall state the reasons respondent failed to file a timely answer, and provide the information required by § 209.6(b). The Administrator may, in his or her discretion and for good cause shown, grant the motion.

### § 209.8 Submission of a remedial plan.

(a) The Administrator may require the respondent to submit a remedial plan. Notice of this requirement and the due date will be given in the complaint. If the respondent requests a hearing, the remedial plan required by the complaint need not be submitted. The final order may include a requirement that the respondent submit a remedial plan.

(b) A respondent may always submit a remedial plan voluntarily in pursuit of informal settlement.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

### § 209.9 Contents of a remedial plan.

(a) The Administrator will specify the requirements of the remedial plan. This may include, but is not limited to, the following information:

(1) A detailed description of the products covered by the remedial order, including the category and/or configuration if applicable, and the make, model year and model number, if applicable.

(2) A detailed description of the present location of the products, in-

cluding a list of those in possession of the products and, if necessary, how the respondent intends to contact the persons in possession and retrieve the products.

(3) Any appropriate remedies the respondent would propose as an alternative to the specific remedies proposed by the Administrator.

(4) A detailed plan for implementing the remedies, both those proposed by the Administrator and those proposed by the respondent.

(5) A detailed account of the costs of implementing each of the proposed plans.

(b) Remedial plans shall be submitted to Director, Noise Enforcement Division (EN-387), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

### § 209.10 Approval of plan, implementation.

(a) If the Administrator finds that the remedial plan is designed to remedy the noncompliance effectively, he or she will so notify the respondent in writing. If the remedial plan is not approved, the Administrator will provide the respondent with written notice of the disapproval and the reasons for the disapproval. The Administrator may give the respondent an opportunity to revise the plan, or the Administrator may revise the plan.

(b) The respondent shall commence implementation of the approved plan upon receipt of notice from the Administrator that the remedial plan has been approved, or revised by the Administrator and then approved.

(Sec. 13, Noise Control Act (42 U.S.C. 4912))

### § 209.11 Filing and service.

(a) After an answer containing a written demand for a hearing has been filed, an original and two copies of all documents or papers required or permitted to be filed under these rules of practice shall be filed with the hearing clerk.

(b) When a party files with the hearing clerk any pleadings, any additional issues for consideration at the hearing, or any written testimony, documents, papers, exhibits, or materials, proposed

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to be introduced into evidence or papers filed in connection with any appeal, it shall serve copies upon all other parties. A certificate of service shall be provided on or accompany each document or paper filed with the hearing clerk. Documents to be served upon the Director of the Noise Enforcement Division shall be mailed to: Director, Noise Enforcement Division, U.S. Environmental Protection Agency (EN-387), 401 M Street SW., Washington, DC 20460.

(c) Service by mail is complete upon mailing. Filing is completed when the document reaches the hearing clerk. It shall be timely if mailed within the time allowed for filing as determined by the postmark.

### § 209.12 Time.

(a) In computing any period of time prescribed or allowed by these rules of practice, the day of the act or event from which the designated period of time begins to run shall not be included, except as otherwise provided. Saturdays, Sundays, and Federal legal holidays shall be included in computing any period allowed for the filing of any document or paper, except that when a period expires on a Saturday, Sunday, or Federal legal holiday, the period shall be extended to include the next following business day.

(b) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, 3 days shall be added.

### § 209.13 Consolidation.

The Administrator or the administrative law judge may consolidate two or more proceedings to be held under this section for resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise any issues that could otherwise have been raised.

### § 209.14 Motions.

(a) All motions, except those made orally during the course of the hearing, shall be in writing, shall state the

grounds with particularity, and shall set forth the relief or order sought.

(b) Within 10 days after service of any motion filed under this section or within such other time as may be fixed by the Environmental Appeals Board or the administrative law judge, as appropriate, any party may serve and file an answer to the motion. The movant shall, by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, serve and file reply papers within the time set by the request.

(c) The administrative law judge shall rule upon all motions filed or made subsequent to his or her appointment and prior to the filing of his or her decision or accelerated decision, as appropriate. The Environmental Appeals Board shall rule upon all motions filed before the appointment of the administrative law judge and all motions filed after the filing of the decision of the administrative law judge or accelerated decision. Oral argument of motions will be permitted only if the administrative law judge or the Environmental Appeals Board, as appropriate, deems it necessary.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

### § 209.15 Intervention.

(a) Persons desiring to intervene in a hearing to be held under section 11(d) of the act shall file a motion setting forth the facts and reasons why they should be permitted to intervene.

(b) In passing on a motion to intervene, the following factors, among other things, shall be considered by the administrative law judge:

(1) The nature of the movant's interest including the nature and the extent of the property, financial, environmental protection, or other interest of the movant;

(2) The effect the order which may be entered in the proceeding may have on the movant's interest;

(3) The extent to which the movant's interest will be represented by existing parties or may be protected by other means;

(4) The extent to which the movant's participation may reasonably be expected to assist materially in the development of a complete record;